

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 3:20-cv-00568-LRH-WGC

Plaintiff,

ORDER

v.

\$357,965.00 IN UNITED STATES
CURRENCY,

Defendant.

On December 17, 2020, the Government filed a motion to strike Daniel Hulsey, Jr.'s Answer to the Government's Complaint. ECF No. 13. Hulsey opposed (ECF No. 14) and the Government replied (ECF No. 17). The Government then filed a motion to strike Hulsey's notice of claim (ECF No. 18) on January 5, 2021, to which he failed to timely respond (*see* ECF No. 19). On January 26, 2021, Hulsey filed a motion to file a belated opposition to the Government's motion to strike. ECF No. 20. The Government opposed (ECF No. 21) and Hulsey timely replied (ECF No. 22). For the reasons contained within this Order, the Court denies the Government's motions to strike and denies Hulsey's motion as moot.

I. BACKGROUND

On October 1, 2020, the Government filed its Complaint for forfeiture *in rem* for \$357,965.00 in United States Currency based on allegations that the funds represent proceeds of illegal drug trafficking. ECF No. 1. On October 5, 2020, the Court entered its Order for Summons and Warrant of Arrest in Rem for property and Notice, and the Clerk of Court issued the Summons

1 and Warrant of Arrest in Rem for Property and Notice. ECF Nos. 3 & 4. On October 21, 2020, the
 2 parties stipulated that Hulsey received the Complaint and Notice of this forfeiture action, and to
 3 extend the time for him to file a verified claim.¹ ECF Nos. 5 & 7. The docket reflects that no
 4 verified claim was filed by the agreed deadline.² However, on December 15, 2020, Hulsey filed
 5 an Answer to the Complaint. ECF No. 12. In this Answer, he admits that the \$357,965.00 in United
 6 States currency was seized from his vehicle and is his legally owned and obtained property. *Id.* ¶ 4.

7 The Answer also includes, as attached, a signed notarized “Verification,” which reads:

8 DANIEL HULSEY, JR., of lawful age, having been first duly sworn, on
 9 oath states: that I am the Defendant in the hearinabove styled cause of action; that
 10 I have read the foregoing Answer to In Rem Complaint, and the statements and
 11 allegations contained and set forth therein are true and correct to the best of my
 12 information, knowledge and belief.

13 *Id.* at 9. Having failed to file a verified claim, the Government moves to strike Hulsey’s Answer.
 14 ECF No. 13. Hulsey opposed, arguing that the failure to file the verified claim was due to an
 15 “oversight,” and that the Answer suffices as a verified claim because it contains all of the
 16 statutorily required information and was signed by Hulsey. ECF Nos. 14.

17 Hulsey subsequently filed his notice of verified claim on the docket on December 28, 2020.
 18 ECF No. 15. Without waiting for the Court to rule on the first pending motion, the Government
 19 filed a motion to strike this notice, arguing that it is untimely. ECF No. 18. Hulsey failed to file
 20 any opposition to the Government’s motion due to a miscommunication between Hulsey’s counsel
 21 and his Nevada-based counsel (each thought the other was filing the responsive brief). ECF Nos.
 22 19 & 20. Realizing his error, Hulsey now motions the Court for permission to file a belated
 23 opposition to the Government’s motion to strike his notice of claim. ECF No. 20.

24 **II. DISCUSSION**

25 Pursuant to Rule G(5)(a)(i) of the Supplemental Rules for Admiralty or Maritime Claims
 26 and Asset Forfeiture Actions, “[a] person who asserts an interest in the defendant property may
 27 contest the forfeiture by filing a claim in the court where the action is pending.”

28 ¹ Per the stipulation, this deadline was November 30, 2020. *See* ECF No. 7. Though not reflected on the
 docket, the parties agree that this deadline was later extended to December 15, 2020. *See* ECF No. 18 at 3.

² Though Hulsey recognizes that it is not a ‘verified’ claim, Hulsey filed an administrative claim with the
 DEA on (what the Court believes to be) July 10, 2020. *See* ECF No. 22 at 2; ECF No. 22-1.

1 SUPPLEMENTAL R. G(5)(a)(i). The verified claim must be filed, generally 35 days after the notice
 2 is sent, unless otherwise articulated by the Government. SUPPLEMENTAL R. G(5)(a)(ii)(A);
 3 G(4)(b). Once the claimant has filed his verified claim, he has 21 days to file an Answer to the
 4 Complaint. SUPPLEMENTAL R. G(5)(b). For a claimant to intervene in an *in rem* forfeiture action
 5 like this, he must demonstrate both constitutional and statutory standing. *United States v. One 1985*
 6 *Cadillac Seville*, 886 F.2d 1142, 1148 (9th Cir. 1989). If a claimant fails to comply with Rule G(5)
 7 or (6) or lacks standing, the Court may strike a claimant's claim or answer on the Government
 8 motion. SUPPLEMENTAL R. G(8)(c)(i).

9 To establish constitutional standing, the claimant must demonstrate he has "such a personal
 10 stake in the outcome of the controversy as to warrant his invocation of federal court jurisdiction."
 11 *One 1985 Cadillac Seville*, 886 F.2d at 1148. "[A] simple claim of *ownership*," or an assertion of
 12 a possessory interest with some explanation of it, will be sufficient to create standing, though
 13 "[m]ere *unexplained possession*" will not be. *United States v. \$191,910.00 in U.S. Currency*, 16
 14 F.3d 1051, 1058 (9th Cir. 1994) (emphasis in original). Here, Hulsey has admitted that the at issue
 15 U.S. currency was seized from his vehicle on May 10, 2020, and it belongs to and is "his legally
 16 obtained property that he obtained through legal employment throughout his lifetime." ECF Nos.
 17 1 ¶ 4; ECF No. 12 ¶¶ 4, 22. The Court therefore finds that Hulsey has constitutional standing.

18 To establish procedural standing, the claimant must show he adhered to the requirements
 19 of Supplemental Rule G(5). This includes filing a timely verified claim, which must "(A) identify
 20 the specific property claimed; (B) identify the claimant and state the claimant's interest in the
 21 property; (C) be signed by the claimant under penalty of perjury; and (D) be served on the
 22 government attorney designated[.]" SUPPLEMENTAL R. G(5)(a). The Government argues that
 23 Hulsey lacks standing because he failed to file his verified claim by the agreed deadline
 24 (December 15, 2020); instead, he filed his Answer on that date. Hulsey articulates that this was
 25 due to an "oversight," and once he became aware of this error, he filed his verified claim on
 26 December 28, 2020; just 13 days after the deadline.

27 Hulsey argues that his Answer may be treated as a verified claim because it includes all of
 28 the statutorily required information, and it was signed by him under penalty of perjury. The Court

1 agrees. *See* ECF No. 12 ¶ 4 (identifying the property claimed); ECF No. 12 ¶¶ 4, 22 (identifying
 2 the claimant and his ownership interest); ECF No. 12 at 9 (showing that Hulsey signed the Answer
 3 under penalty of perjury); and ECF No. 12 at 10 (showing that the Answer was served on the
 4 Government). *See United States v. One Urban Lot Located at 1 Street A-1, Valparaiso, Bayamon,*
 5 *Puerto Rico*, 885 F.2d 994, 999-1000 (1st Cir. 1989) (“[W]e conclude that in this particular case,
 6 where the claimant timely filed a *verified* answer containing all of the information required in the
 7 claim, the answer may be deemed to have fulfilled the function of a claim in terms of establishing
 8 the owner’s standing.” (emphasis in original)).

9 Further, while many courts have held that strict compliance with the statutory procedures
 10 of Rule G is required, *see United States v. \$20,000.00 in United States Currency*, 350 F.Supp.3d
 11 1148, 1157 (D. N.M. 2018) (collecting cases), the advisory committee notes to Rule G(8)(c)(i)(A)
 12 provide that a Court should only strike a claim or answer “if satisfied that an opportunity should
 13 not be afforded to cure the defects under [Federal Rule of Civil Procedure 15.” And the Ninth
 14 Circuit agrees that strict compliance “does not mean that any deficiency in a claim form requires
 15 dismissal of a claim.” *United States v. \$11,500.00 in U.S. Currency*, 710 F.3d 1006, 1012 (9th Cir.
 16 2013). Rather, it is in the discretion of the district court to determine whether to “overlook the
 17 failure to conform to the requirements” of a forfeiture claim. *Id.* (quoting *United States v. Real*
 18 *Property at 2659 Roundhill Dr., Alamo, Cal.*, 194 F.3d 1020, 1024 (9th Cir. 1999)). Factors the
 19 court considers are “whether the deficiency prejudiced the government, . . . and whether it was a
 20 strategic attempt to gain some advantage.” *Id.* (internal citations omitted).

21 Here, Hulsey’s failure to file his verified claim before his Answer, through procedurally
 22 incorrect, did not prejudice the Government. The Government has been well aware that Hulsey is
 23 a claimant to this forfeiture action since approximately July 2020 and has previously granted him
 24 two extensions. The Government has failed to show how it is or would be prejudiced by permitting
 25 Hulsey another 13-day extension (December 15 to December 28), to file his claim. Nor does
 26 anything before the Court indicate that Hulsey’s error was a strategic attempt to gain an advantage
 27 over the Government. Contrarily, Hulsey’s error does not gain him any advantage as his failure
 28

1 could have been fatal to his claim. Finally, the Court finds that justice requires such a short
2 extension so that this case can be resolved on the merits.

3 Therefore, the Court denies the Government's motions to strike. However, the Court does
4 so with a cautionary instruction to Hulsey's counsel. In the short, four-month history of this case,
5 defense counsels' conduct has been ripe with errors, and has been both unprofessional and
6 inexcusable. Such further unprofessional conduct will likely result in revocation of Gabriel
7 Grasso's permission to practice *pro hoc vice* within this District Court.


8 **III. CONCLUSION**

9 IT IS THEREFORE ORDERED that the Government's motions to strike (ECF Nos. 13 &
10 18) are **DENIED**.

11 IT IS FURTHER ORDERED that Hulsey's motion to file a belated opposition (ECF No.
12 20) is **DENIED as moot**.

13 IT IS SO ORDERED.

14 DATED this 10th day of February, 2021.

15
16 
17 LARRY R. HICKS
18 UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28